FILED
AUG 2 - 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-1458

In The
Supreme Court of the United States

MICHAEL GEDDES and KARI GEDDES, individually and as parents and guardians of ANDREW GEDDES, a minor child,

Petitioners,

vs.

UNITED STAFFING ALLIANCE EMPLOYEE MEDICAL PLAN; U.S.A. UNITED STAFFING ALLIANCE, L.L.C., a limited liability company; and EVEREST ADMINISTRATORS, INC., a Utah corporation,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

OPPOSITION OF EVEREST ADMINISTRATORS, INC. TO PETITION FOR WRIT OF CERTIORARI

D. DAVID LAMBERT and
Counsel of Record
LESLIE W. SLAUGH for
HOWARD, LEWIS & PETERSEN, P.C.
120 East 300 North Street
P.O. Box 1248
Provo, Utah 84603
Telephone: (801) 373-6345
Facsimile: (801) 377-4991
Attorneys for Everest Administrators, Inc.

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Can Geddes now argue that Everest was a fiduciary after having stipulated that Everest was not a fiduciary and after the trial court and the court of appeals relied on that stipulated fact in rendering their rulings?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Everest Administrators, Inc. is a privately held Utah corporation. None of its shares is held by a publicly traded company.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	1
ARGUMENT	2
THERE IS NO CLAIM FOR RELIEF AGAINST EVEREST	2
CONCLUSION	4

TABLE OF AUTHORITIES

CASES CITED:

Geddes v. United Staffing Alliance Employee Med. Plan, No. 2:03-cv-00440 (D. Utah Mar. 23, 2005) 2

Geddes v. United Staffing Alliance Employee Med. Plan, 469 F.3d 919 (10th Cir. 2006) 1, 2, 3

STATUTES CITED:

29 U.S.C. § 1132(d)(2) 3

STATEMENT OF THE CASE

U.S.A. United Staffing Alliance, L.L.C. ("United Staffing") provided employee health benefits to Michael Geddes and his family, including Andrew Geddes. *Geddes v. United Staffing Alliance Employee Med. Plan*, 469 F.3d 919, 922 (10th Cir. 2006) (copy attached to Geddeses' Petition for Writ of Certiorari, pp. 3a-4a.) Everest Administrators, Inc. ("Everest") is an independent claims administrator that provided certain claims administration services to United Staffing. *Id.* (Geddeses' Petition, app. 4a). Everest administered the day-to-day business of the plan. *Id.*

Andrew Geddes was injured in a diving accident and suffered a crippling neck injury. *Id.* (Geddeses' Petition, app. 2a). United Staffing, through Everest, paid for Andrew's initial hospitalization, but denied payment for ongoing care on the ground that the care was classified as rehabilitation and exceeded the $2,500 limit for rehabilitative services under the employee benefit plan. 469 F.3d at 923 (Geddeses' Petition, app. 4a).

SUMMARY OF ARGUMENT

Everest takes no position on whether the Court should review the decision of the court of appeals relating to United Staffing. It appears, however, that Geddeses are also attempting to raise a new issue relating to Everest, contrary to the Geddeses' stipulations below.

All parties stipulated in the district court that Everest was not a fiduciary and was only an independent contractor employed to provide claims administration services on

behalf of the employee benefit plan. United Staffing was the plan administrator. By contract and by statute, United Staffing is the only entity that may be held liable for a denial of benefits. Despite their stipulation below and the fact that the petition seeks only to address the standard of review of the plan's denial of benefits decisions, Geddeses allude in various ways throughout the petition that the trial court erred when it "found" that Everest was not a fiduciary.

The Geddeses should be bound by their stipulation that Everest is not a fiduciary. Any grant of certiorari should be expressly limited to issues relating to United Staffing.

ARGUMENT

THERE IS NO CLAIM FOR RELIEF AGAINST EVEREST.

All parties stipulated that Everest was not a fiduciary. The district court decision states: "During the summary judgment hearing held before the court, all parties agreed that Everest – the company to which United Staffing delegated its authority to review and evaluate claims – was not a fiduciary and had no fiduciary duties to the Geddes." *Geddes v. United Staffing Alliance Employee Med. Plan*, No. 2:03-cv-00440, slip op. at 14 (D. Utah Mar. 23, 2005) (Appendix to Geddeses' Petition for Writ of Certiorari, p. 45a.) The court of appeals decision similarly states: "We predicate our analysis on the district court's conclusion that Everest Administrators is not a fiduciary under the terms of the ERISA statute. No party to this action argues to the contrary. Under these circumstances, we decline here to revisit that factual conclusion." *Geddes v.*

United Staffing Alliance Employee Med. Plan, 469 F.3d 919, 931 (10th Cir. 2006) (record citation omitted) (copy attached to Geddeses' Petition for Writ of Certiorari, p. 21a.)

Although the district court acknowledged in its ruling that Everest was not a fiduciary under the plan, the district court nevertheless entered a money judgment against Everest to pay the benefits under the plan. Everest appealed the judgment and the Tenth Circuit held that the ERISA statute, 29 U.S.C. § 1132(d)(2),[1] did not permit a money judgment against Everest, only against the plan entity itself. The Tenth Circuit reversed the judgment against Everest. *Geddes*, 469 F.3d at 932 (Geddeses' Petition, app. 23a).

Geddeses' petition does not expressly challenge the Tenth Circuit's dismissal of the claims against Everest; however, Geddeses indirectly suggest that the district court and the Tenth Circuit erred in "finding" that Everest was not a plan fiduciary. For example, the petition states:

> Oddly, the Tenth Circuit also ruled that although Everest's decision were [*sic*] entitled to ERISA deference, Everest itself was a non-fiduciary and owed no duties to the Geddeses, and that, for this reason, the Geddeses had no recourse against it for benefits under ERISA.

Petition at 7. The petition also states:

> Thus, while it is true that United Staffing could have delegated authority to Everest under Section

---

[1] "Any money judgment under this subchapter against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this subchapter."

> 1105(c)(1)(B), such a delegation would have made Everest a fiduciary, and the court specifically found that Everest is not a fiduciary.

Petition at 14.

These statements are misleading and inaccurate to the extent they imply some "finding" or "ruling" that Everest was not a fiduciary. The district court and the Tenth Circuit relied on the stipulation of Geddeses, United Staffing and Everest that Everest was not a fiduciary of the plan. Having stipulated that Everest was not a fiduciary, Geddeses should not now be allowed to criticize the "finding" that Everest was not a fiduciary. Based on Geddeses' stipulation, there is no basis for relief against Everest.

Geddeses' petition presents no legal arguments challenging the dismissal of Everest. There is, therefore, no basis to review that decision.

CONCLUSION

The only issue before the Court is whether the proper standard of review was used in judging the actions of the plan. Having stipulated to a finding that Everest was not a fiduciary, Geddeses should not be allowed to argue for the first time on a petition for certiorari that this finding was erroneous. Because Everest was not a fiduciary, there is no arguable basis for a judgment against it under the express language of the ERISA statutes.

Any grant of certiorari should be limited to the issues relating to United Staffing. This Court should deny the

petition for writ of certiorari insofar as it might be construed to apply to the claims against Everest.

DATED this 2nd day of August, 2007.

Respectfully submitted,

D. DAVID LAMBERT and
LESLIE W. SLAUGH, for
HOWARD, LEWIS & PETERSEN, P.C.
Attorneys for Everest Administrators, Inc.